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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

DONALD and MAXINE MONTGOMERY,

Appellants,

v.

CITY OF MERCER ISLAND and
RICHARD MOLLER,

Respondent.

SHB NO. 87-17

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a substantial development permit for the reconstruction of a pier and other related improvements on a waterfront lot on Lake Washington in the City of Mercer Island, came on for hearing before the Shorelines Hearings Board; Wick Dufford, Judith A. Bendor, Nancy Burnett, Steven Morrison and Robert Landles, on July 15, 1987, in the Mercer Island Community Center. Mr. Dufford presided.

Appellants Donald and Maxine Montgomery were represented by Elaine Spencer of Bogle & Gates. Respondent City of Mercer Island appeared through Wayne Stewart, Assistant City Attorney. Respondent Richard Moller represented himself. Court reporter Gene Barker & Associates reported the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined.
2 Argument was heard. From the testimony, evidence and contentions of
3 the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellants, the Montgomerys, are owners of waterfront property on
7 Lake Washington on the east shore of Mercer Island where they have
8 built and reside in a substantial residence. Their home lies within a
9 long-established residential area, known as the Appleton
10 neighborhood. The shorelines designation for the area is Urban
11 Residential (UR). There are numerous other residences nearby, both
12 along the waterfront and inland.

13 II

14 Following a pattern common on Mercer Island, the owners of some
15 near-shore inland lots possess part interests in waterfront parcels in
16 order to enjoy access to the "beach" and the lake. Immediately to the
17 north of the Montgomery property two such recreational parcels lie
18 side by side; both are narrow; both are in multiple ownership. The
19 parcel nearest Montgomerys' has three owners and about 30 feet of
20 waterfront. Eight inland lots have rights in the next parcel, which
21 runs about 50 feet along the water.

22 The two recreational parcels were already in existence when the
23 Mercer Island Shorelines Master Program was initially adopted in
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1 1974. They are non-conforming, in that each has more owners than
2 would now be allowed for the amount of shorefront involved.

3 Access to these recreational parcels is provided by an easement
4 road which also serves a number of residences, including the
5 Montgomery home. A small parking area exists at the easterly end of
6 the easement where it meets the recreational property. The upland
7 portions of both recreational parcels are essentially unimproved. No
8 trees, fences or other barriers separate the two properties.

9 Along the waterfront, the recreational parcels are bulkheaded.
10 Pilings in the water in front of the 30 foot lot are all that remain
11 of a former mooring pier. In front of the 50 foot lot is a pier which
12 is still in use, but which has fallen into serious disrepair.

13 III

14 On either side of the two recreational lots are properties with
15 residences. Most, if not all the properties with residences along the
16 lake in the neighborhood (including the Montgomerys') have mooring
17 piers extending into the water in front of the homes.

18 The Shoreline Master Program for Mercer Island requires side
19 boundaries of recreational parcels to be "reasonably" screened from
20 "abutting" property.

22 IV

23 This case concerns the issuance of a substantial development
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1 permit for a project involving replacement of the mooring pier on the
2 50-foot recreational lot. The permit at issue was approved on March
3 23, 1987.

4 The approved project would replace the existing pier with a new
5 structure extending on pilings from the bulkhead 135 feet into the
6 water, with an "L" at the waterward end extending 20 feet to the
7 north. The pier walkway would be five feet wide, leading from a 20 by
8 25 foot deck (partially over water) at the landward end. Moorage
9 slips would be provided along the north side. The existing pier, as
10 well as the old pilings from the pier formerly in front of the 30-foot
11 lot, would be removed.

12 The permit also contemplates certain related improvements, which
13 include a fire pit, a small boat storage shed and an equipment storage
14 box on the deck portion of the pier. The boat storage shed will be
15 near the north property line close to the pier and will accommodate
16 three row boats stored in a tier. The structure will be slightly over
17 six feet high. The fire pit will be immediately adjacent to the pier
18 deck to the south.

19 All these features of the project have been professionally
20 designed with the object of presenting a neat appearance, harmonious
21 with the surroundings.

22 v

23 After preliminary discussion, a substantial development permit
24 application was initially submitted to the City on September 30, 1986,
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(4)

1 on behalf of Richard Moller and others with an interest in the 50-foot
2 lot. Following the submission of additional information, including
3 detailed drawings and plans, the application was deemed complete by
4 the City on January 15, 1987. By this time the proposal had, at the
5 insistence of the City, been expanded to include landscaping and
6 parking features.

7 Thereafter, the Mercer Island planning staff prepared a report
8 recommending approval of the permit with conditions. The conditions
9 referred to Exhibits B and C of the application; the former being
10 drawings of the pier, the latter being a master plan for the entire
11 lot showing landscaping and parking details, as well as the relative
12 location of structures. The conditions were as follows:

- 13 a. Use of the Tract, pier and moorage is limited to the
14 owners, heirs and assigns of Tax Lots 156, 157, 158, 159,
15 170, 176, 188 and 315 and their guests.
- 16 b. A joint use and maintenance agreement for the Tract and
17 the pier shall be recorded with King County. This
18 agreement shall be approved by the City Attorney prior to
19 recording and shall run with the land of the lots
20 involved.
- 21 c. Landscaping and parking improvements shown on Exhibit C
22 shall be installed prior to moorage of boats on the new
23 pier. Wooden wheel stops and/or landscaping shall be
24 placed around the north and east ends of the parking area
25 to contain parking to the designated area.
- 26 d. A paved area for parking of 2 or 3 cars shall be
27 provided. These stalls may be located at the eastern end
28 of the roadway and utility easement (as shown on Exhibit
29 C), if an agreement is signed, notarized and recorded, by
30 the owners of the adjacent 30' beach tract to the east of
31 the easement. If such agreement cannot be reached,

1 parking shall be located on the west side of the subject
2 property. Screening of this alternate parking area shall
3 be provided by the applicant and approved by the Dept. of
Community Development. If the alternate area is used,
the master plan (Exhibit C) shall be revised accordingly.

4 e. The parking area shall be sloped toward an existing catch
5 basin in the northeast corner of the existing parking
6 area. An oil/silt separator shall be installed, if one
does not already exist.

7 f. Improvements on the Tract are limited to those shown on
8 Exhibits B and C, except as modified by these conditions.

9 The landscaping depicted on Exhibit C shows plantings to be
10 retained or to be added on the north and west boundaries of the 50-foot
11 lot. A laurel hedge is shown between the Montgomerys' house and the
12 parking area. The plan calls for no additional screening along the
13 Montgomerys property boundary between their house and the lake.
14 Moreover, no screening is contemplated along the boundary between the
15 30-foot lot and the 50-foot lot.

16 VI

17 Since they became aware of the proposal to replace the pier on the
18 50-foot parcel (apparently late 1985), the Montgomerys have expressed a
19 number of concerns about the project to the City -- among them a desire
20 for more screening of their property.

21 The first official action on the matter was taken after a hearing
22 before the Mercer Island Planning Commission on February 4, 1987. At
23 that hearing the City's staff planner recommended that "due to the open
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1 space and size of the space" there should be no screening between the
2 recreational parcels. "Such screening," he said, "would break up the
3 open expanse unnecessarily."

4 The Planning Commission adopted the recommendations of the staff
5 report, with two modifications:

6
7 1) Section C of the [conditions] shall be amended to
8 delete the laurel hedge proposed on the south edge of the
parking area.

9 2) Section D of the [conditions] shall be amended by
adding to the end:

10 "Parking shall be limited to the designated area only."

11
12 The Montgomerys appealed the Planning Commission's decision to the
13 Mercer Island City Council. On March 23, 1987, after a public hearing,
14 the City Council voted to affirm the Planning Commission.

15 The instant appeal to the state Shoreline Hearings Board followed
16 on April 22, 1987. This appeal was limited to the sole issue of
17 whether the permit as granted violates applicable screening
18 requirements of the Mercer Island Shorelines Master Program.

19 VII

20 The Montgomerys' house sits back on its property separated from the
21 lake by a spacious lawn. Picture windows are built into the lakefront
22 side of the house. A patio has been constructed out of doors next to
23 the kitchen. The lake is visible from a number of vantages.

1 However, the view of the recreational parcels to the north is
2 impaired by a six-foot fence which runs down to the lake on or near the
3 Montgomerys' north property line. In addition, inside this fence are
4 planted a row of hornbeams whose present height exceeds that of the
5 fence. In summer when in leaf, the hornbeams obscure the view of the
6 neighboring properties to a substantial degree. Summer is the season
7 when the recreational lots are primarily used.

8 VIII

9 The Montgomerys are concerned about increased intensity of use on
10 the 50-foot lot after the pier replacement and other improvements are
11 completed. They point out that the fence along their property line is,
12 in part, in a small depression so that it effectively blocks somewhat
13 less than six feet of view. They draw attention to existing gaps
14 between the hornbeams which prevent these trees from eliminating visual
15 awareness of persons or objects which may be occupying the 50-foot lot.

16 IX

17 When the Montgomerys moved into the neighborhood in 1978, the two
18 recreational lots to the north of them were already in existence, were
19 used for recreation, and had been so used for some time.

20 In 1978, a number of full-sized alders and willows grew near the
21 water and near the line between the two recreational lots. Over the
22 intervening years, for one reason or another, these trees have been cut
23 down. The removal of these trees prompted the Montgomerys to build
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1 their fence, and then, about a year and half ago, to plant the
2 hornbeams.

3 X

4 What the Montgomerys now seek is the interposition of some sort of
5 screening barrier along the boundary between the 30-foot lot and the
6 50-foot lot. The owners of both the recreational lots oppose this.

7 XI

8 In light of all the evidence, considering the long-term
9 recreational character of the parcels to the north of Montgomerys, and
10 the existing fence and vegetative barrier along Montgomery's lot line,
11 we are not persuaded that the present level of screening of the
12 Montgomerys' lot fails to meet a reasonableness standard.

13 Moreover, we are confident that, as time passes, today's young
14 hornbeams will grow larger and thicker, filling in the visual holes
15 between them.

16 XII

17 Any Conclusion of Law which is deemed a Findings of Fact is hereby
18 adopted as such.

19 From these Findings, the Board comes to the following

20 CONCLUSIONS OF LAW

21 I

22 We are asked to decide that the permit issued to respondent Moller
23 is contrary to the Mercer Island Master Program provision concerning
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1 screening on "semi-private waterfront recreational tracts." Under the
2 Section 19.04.130(BB)(3)(e) such tracts must conform with the following:

3 (e) Screening - the boundaries of the upland portion of
4 the parcel shall be reasonably screened or fenced, or
5 both, from abutting property and streets, and
appropriately landscaped. (Emphasis added)

6 The Montgomerys contend that this mandatory language requires some
7 sort of barrier to be erected along the boundary between the 30-foot
8 and the 50-foot lots. We disagree.

9 11

10 Applying the term "abutting" literally to mean "immediately
11 adjacent," does not produce the results the Montgomerys seek. If we
12 are to look at what is reasonable screening between two recreational
13 lots in an Urban Residential (UR) environment, we must be mindful that
14 the recreational use of such lots is a part of the overall planned-for
15 residential use pattern. Recreational lots provide a shoreline use
16 dimension to residences slightly more remote from the water than those
17 residences right on the lakefront. Recreational tracts are explicitly
18 recognized and approved by the Master Program, at Section 19.04.130(I)
19 which states the purpose of the UR environment:

20 The UR environment is intended to protect areas which are
21 appropriate primarily for residential uses. The purpose
22 of the UR environment designation is to maintain the
23 existing residential character of the designated area
24 in terms of bulk, scale, and general types of activities
25 and developments. Semi-private waterfront tracts as
regulated herein are allowed in the UR environment.

1 Recreational lots, then, are recognized as part of the existing
2 residential character of the environment.

3 The Montgomerys contend that the screening requirements applicable
4 to recreational tracts are aimed at protecting the character of
5 waterfront lots with homes on them. This proposition, however, does
6 not lead to the conclusion that recreational lots should be screened
7 from each other. For two adjacent recreational lots to remain in open
8 space is entirely consistent with maintaining their existing character.

9 Here, given the narrowness of the two lots, the erection of a
10 barrier between them would create a kind of bowling alley effect. We
11 agree with the City's planner that this would "break up the open
12 expanse unnecessarily," particularly in light of the fact that the
13 owners of the "abutting" recreational lot are opposed to any such
14 barrier. We conclude that reasonable screening along the common
15 boundary of the two recreational properties is no screening.

16 III

17 We decide, however, that the purpose of protecting waterfront
18 homeowners allows the screening provision to be construed to offer
19 protection to residents in the Montgomerys' position -- only one narrow
20 lot away from the project. "Abutting" may, therefore, in some cases
21 include "nearby" rather than only "next door."

22 Under this approach, reasonable screening of the boundary of a
23 recreational parcel is not necessarily screening which lies on the
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1 boundary itself. The boundary can be screened by sight barriers which
2 lie closer to the property to be protected. In this case we have not
3 been convinced that the present fence and plantings along the
4 Montgomerys' property line fail to provide reasonable screening from
5 permitted uses on the 50-foot recreational tract. Under the
6 circumstances the Master Program is satisfied and the applicants for
7 this permit should be asked to do no more.

8 IV

9 Any Finding of Fact which is deemed a Conclusions of Law is hereby
10 adopted as such.

11 From those Conclusions the Board enters this
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ORDER

The decision of the City of Mercer Island to issue a substantial development permit to Richard Moller, et al. is AFFIRMED.

DONE this 15th day of October 1987.

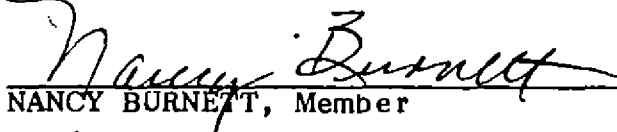
SHORELINES HEARINGS BOARD



WICK DUFFORD, Presiding



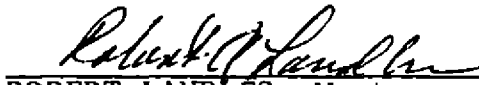
JUDITH A. BENDOR, Member



NANCY BURNETT, Member



STEVEN MORRISON, Member



ROBERT LANDLES, Member

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